INSTRUCTIONS

1. This paper contains four questions. Unless otherwise indicated, references to the Companies Act are to the Companies Act 71 of 2008.

2. Answer any three questions. All questions carry equal marks. Where a question is divided into parts, marks have not been allocated to the various parts, and your answer to the question will be marked as a whole.

3. Where appropriate, refer in your answers to relevant decided cases.

4. This is a closed book examination; no materials of any kind may be brought into the examination venue or consulted during the examination.
Question 1

Explain the legal principles that determine the circumstances in which each of the following, namely, the board of directors acting collectively, or the chairman of the board of directors, or the managing director, or an ordinary director, or the company secretary has actual authority, alternatively, ostensible authority (and explain the concept of “ostensible authority”) to enter into contracts that are binding on the company. Go on to explain the potential liability of an agent, at common law, for breach of warranty of authority and the circumstances in which such liability may arise in the context of company law.

[Total Q1: 20 marks]

Question 2

Discuss the concept of the gross or unconscionable abuse of juristic personality as a ground for piercing the corporate veil as envisaged in section 65 of the Close Corporations Act 69 of 1984 and in section 20(9) of the Companies Act 71 of 2008. In your answer you must explain the manner in which this concept was applied in Airport Cold Storage (Pty) Ltd v Ebrahim 2008 (2) SA 303 (C) (and in the Supreme Court of Appeal decision in that case) and in Ex parte Gore NO [2013] ZAWCHC 9. In addition, you must also discuss the remedy, under section 20(9), mentioned above, of piercing the corporate veil as articulated in the judgment in Ex parte Gore.

[Total Q2: 20 mark]
Question 3
The Companies Act 71 of 2008 provides in section 76 that a director of a company "may not use the position of director or any information obtained while acting in the capacity of director to gain an advantage for the director …"

Discuss the way in which the courts are likely to interpret this provision in the light of the similar common law principle, and include in your answer a discussion of the decision in Regal Hastings Ltd v Gulliver [1942] 1 All ER 378 (HL) (and the significance in this regard of "the so-called rule in Keech v Sandford") and any other relevant cases.

[Total Q3: 20 mark]

Question 4
The Companies Act 71 of 2008 provides in section 163 that –

“(1) A shareholder or a director of a company may apply to a court for relief if-
(a) any act or omission of the company, or a related person, has had a result that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant;

(b) the business of the company, or a related person, is being or has been carried on or conducted in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant …

(2) Upon considering an application in terms of subsection (1), the court may make any interim or final order it considers fit . . . ”

Discuss, in the light of the similar provisions of the Companies Act 61 of 1973 and case law the kinds of conduct that the courts may regard as falling within the scope of sub-sections (1)(a) - (b) above, and the kind of order the court may make under sub-section (2).

[Total Q4:20 marks]

[TOTAL FOR PAPER: 60 MARKS]